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12 *Attorneys for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT FOR**
14 **THE SOUTHERN DISTRICT OF CALIFORNIA**

15 IN RE PORTFOLIO RECOVERY
16 ASSOCIATES, LLC, TELEPHONE
17 CONSUMER PROTECTION ACT
LITIGATION

No. 11-md-02295-JAH-BGS

Hon. John A. Houston
Hon. Bernard G. Skomal

THIS DOCUMENT RELATES TO:
3:11-cv-03007-JAH-BGS
3:11-cv-03006-JAH-BGS

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21 **PLAINTIFFS FRYDMAN, MARIN,**
JURY, MEYER, AND ALLEN'S
RESPONSE TO PLAINTIFFS
BARTLETT AND HARVEY'S
CONSOLIDATED MOTION FOR
STANDING TO ACTIVELY
PARTICIPATE IN SETTLEMENT
CONFERENCE

1 Plaintiffs Jeremy Frydman, Sam Marin, Jesse Meyer, Fred Jury, and Danny Allen
 2 (“Nationwide Plaintiffs”) hereby respectfully submit their response (“Response”) to Plaintiffs
 3 Kimberly Bartlett and Karen Harvey’s (“Carve-Out Plaintiffs”) Consolidated Motion for Standing to
 4 Actively Participate in Settlement Conference Scheduled for May 8, 2013 Pursuant to the Order of
 5 Honorable Bernard G. Skomal (“Bartlett and Harvey motion”). (Dkt. No. 87).

6 Nationwide Plaintiffs, by lead counsel, do not object to the presence of Henry Turner at
 7 the settlement conference, but object to any attempt by Mr. Turner to establish subclasses.

8 There are no subclasses in this MDL proceeding. While Bartlett and Harvey have
 9 repeatedly attempted to have subclasses established, those efforts have been rejected three times,
 10 once by the MDL panel, and twice by Judge Houston. (Dkt. Nos. 18 and 35).

11 Bartlett and Harvey want a narrower class than the nationwide class, but they seek no
 12 additional relief for that class. The factors cited by Bartlett and Harvey (the residence the
 13 putative subclasses, and the age of the debt with respect to the statute of limitations) are not
 14 material because they have no bearing on either liability or relief. The restriction to those
 15 persons who phone numbers have been skip-traced is not material because it is subsumed in the
 16 Nationwide Class definition – the class definition in the Amended Consolidated Complaint
 17 specifically includes in the class all persons for whom that defendants:

18 fail to produce records (or other evidence) that such person provided such cellular
 19 telephone number to Defendants or the original creditor (including, for example,
 20 where the number was obtained through skip tracing or captured by the
 21 Defendants’ equipment from an inbound call).

22 There is no reason to differentiate skip traced persons from those whose number was obtained by
 23 capture from an inbound call or obtained by any other means. Because Bartlett and Harvey have
 24 failed to show how these distinctions have any legal significance to the TCPA claims at issue,
 25 the subclasses they have proposed are not appropriate. *Cf. Clark Equipment Co. v. Int’l Union,*
 26 *Allied Indus. Workers of America, AFL-CIO*, 803 F.2d 878, 880 (6th Cir. 1986) (subclassing is
 27 “appropriate only when the court believes it will materially improve the litigation” because it
 28 “often leads to more complex and protracted litigation,” citing *Mendoza v. United States*, 623
 F.2d 1338 (9th Cir. 1980)); *White v. Experian Info. Solutions, Inc.*, 803 F. Supp. 2d 1086, 1109

(C.D. Cal. 2011) (“not every distinction among groups of class members gives rise the existence of a subclass”; quoting *Shaffer v. Continental Cas. Co.*, 362 Fed. Appx. 627, 630-31 (9th Cir. 2010) for proposition that “the fact that it is possible to draw a line between categories of class members’ does not necessarily mean that subclasses exist for the purposes of an *Amchem* analysis”).

Lead counsel has been designated by the Court to represent all purported class members at this stage of the proceedings. After reflection, lead counsel do not object to Mr. Henry’s attendance at the settlement conference, but we do object to his active participation in the conference if Mr. Henry intends to use the settlement conference as a platform to renew his quest to establish subclasses. Lead counsel seek to obtain a settlement for the entire class, but recognize that the negotiations will be difficult and lengthy under any circumstances. Any amount of time spent discussing previously rejected subclasses will be counterproductive.

Dated: April 11, 2013

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CERTIFICATE OF SERVICE

Pursuant to 28 U.S.C. § 1746, I hereby certify that I served the foregoing document and this Certificate of Service upon the parties listed below by causing the foregoing document to be transmitted to the Electronic Filing System in the manner prescribed by the Court's Administrative Policies and Procedures Manual on the date below:

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